

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

December 5, 1990

Nancy G. Wright, Esq.
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Box 679
Lakewood, New Jersey 08701

Dear Ms. Wright:

This letter responds to your August 31, 1990 letter to Marianne Lamont requesting written concurrence from EPA that the solder skimmings processed by your client, Electrum Recovery Works, Inc., meet the definition of scrap metal and, thus, when reclaimed are exempt from hazardous waste regulation in the State of New Jersey.

In your letter, you summarized the Agency's position presented in a July 20, 1989 letter from Mr. Devereaux Barnes, Director of EPA's characterization and Assessment Division, to Mr. Jack Douglas, President of Electrum Recovery Works, Inc. In that letter we stated that the solder skimmings meet the definition of a nonlisted by-product that exhibits a characteristic of a hazardous waste; however, because the skimmings are reclaimed, they are excluded from the definition of solid waste and, therefore, are not hazardous wastes and are not subject to Federal hazardous waste regulations. We also determined, based on both the narrative description provided in the letter from Mr. Douglas and the actual samples of solder skimmings that were provided, that the solder skimmings did not meet the current definition of scrap metal.

Even though the solder skimmings being reclaimed would not be subject to Federal regulation, the State of New Jersey has implemented State regulations that apply hazardous waste regulations to such nonlisted by-products being reclaimed (i.e., nonlisted by-products being reclaimed are not excluded from the definition of solid waste). However, the State regulations do provide an exemption from regulation for hazardous scrap metal that is being reclaimed. Therefore, you are seeking an interpretation of the Federal definition of scrap metal that would include solder skimmings, thus allowing for the solder skimmings to be exempt from State regulation (assuming the State agency similarly interpreted the State's definition of scrap metal to include solder skimmings).

As stated in the July 20, 1989 letter to Mr. Douglas, the Agency agrees that valid and environmentally sound recycling should be encouraged, especially when the alternative is to dispose of an otherwise usable material as a hazardous waste. However, "scrap metal" is defined at 40 CFR 261.1(c)(6) as "...bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box

cars), which when worn or superfluous can be recycled.” Further, the January 4, 1985 **FEDERAL REGISTER** preamble discussion regarding scrap metal (see 50 **FR** 624-625) states that “drosses” do not meet the definition of scrap metal. (The Agency considers solder skimmings to be more closely identified with the term “drosses” rather than the term “turnings,” as you have suggested.) Thus, under the current definition of scrap metal, EPA simply cannot agree that the solder skimmings meet the definition of scrap metal, even if such a determination would further the environmentally sound recycling of a usable by-product.

Finally, as you may be aware, RCRA provides, by statute, that State programs authorized to operate in lieu of the Federal hazardous waste program may be either broader in scope or more stringent than the Federal program (or both). New Jersey has been authorized to operate its hazardous waste program in lieu of the Federal program, and appears to have chosen to codify a program which is broader in scope than the Federal regulations. Regulatory determinations in authorized States are binding on regulated parties operating within that State. Should New Jersey choose to seek assistance on a determination, the State agency should contact the EPA Region II Office in New York.

You may be interested to know that EPA is undertaking a review of issues concerning the definition of solid waste and is in the process of holding a series of meetings to obtain input on those issues. We would welcome any further information or perspectives you may wish to share with us on the solid waste definition as we undertake our review. Should you need more information or have further questions, you may contact the RCRA Hotline at 1-800-424-9346, or Mr. Mike Petruska, chief of the Regulatory Development Branch at (202) 475-8551.

Sincerely,

David Bussard Director
Characterization and Assessment Division

FaxBack # 11572